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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1113

EDDIE J. VIATOR,

Appellant,

vs.

STATE TAX COMMISSION OF MISSISSIPPI, ET AL.,

Appellees.

MOTION FOR LEAVE TO FILE AMENDED JURISDICTIONAL STATEMENT.

Comes the Appellant, through undersigned Counsel, and respectfully moves the Court for leave to file an Amended Jurisdictional Statement herein, so as to more fully and accurately, and completely, show the substantial Federal questions involved in this appeal, the manner in which such questions are substantial, and a statement of the grounds upon which it is contended the questions involved are substantial, as Required by Rule 12, par. 1.

Respectfully submitted,

ALBERT SIDNEY JOHNSTON, JR.,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1113

EDDIE J. VIATOR,

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vs.

STATE TAX COMMISSION OF MISSISSIPPI, ET AL.,

Appellees.

AMENDED JURISDICTIONAL STATEMENT.

MAY IT PLEASE THE COURT:

The appellant in support of the jurisdiction of this Court to review the above entitled cause on appeal respectfully represents:

A.

Statutory Provision Sustaining Jurisdiction.

The Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 936, 938, (United States Code, Title 28, Section 345), provides that Section 237 of the Judicial Code is amended to read in part as follows:

"Sec. 237. (a) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a

treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."

The statutory provision believed to sustain the jurisdiction of the Supreme Court of the United States, to review the above entitled cause on appeal, is, therefore, Sec. 237 (a) of the Judicial Code, as amended by Act of Feb. 13, 1925, Chapter 229, 43 Stat. 936, 938.

The Statutes of the State of Mississippi, the validity of which is involved, are Chapter 113, Laws of 1938, known as the Sales Tax Law of Mississippi, Sections 6 and 12, and Chapter 150, Laws of 1938, Section 1, which statutes, and the particular sections thereof mentioned here, are to be found at pages 94, 95, — and —, of the General Laws of Mississippi of 1938, where Sections 6 and 12 are set out, and at pages 346, 7, 8, and 349 of the General Laws of Mississippi of 1938, where Section 1, amending Section 2 of Chapter 119, Laws of 1932, is fully set out, the particular provisions of Section 1, Chapter 150, Laws of 1938, the validity of which is involved, are to be found at pages 348 and 349, General Laws of Mississippi of 1938, said Sections being in the following language, viz:

"Sec. 6. Be it enacted, that section 8 of chapter 119, laws of 1934, as amended by chapter 158, laws of 1936, be and the same is hereby amended so as to read as follows:

Taxpayer must keep records—failure to make returns—duty and power of commissioner.

"It shall be the duty of every person engaging or continuing, in this state, in any business for which a privilege tax is imposed by this act to keep and preserve adequate records of the gross income, gross receipts or gross proceeds of sales of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable, under the provisions of this act, which said records shall be adequate in substance rather than form, to conform to the requirements and regulations promulgated by the commissioner; and all of such records shall be written in the English language. And it shall be the duty of every such person to keep and preserve, for a period of two years, all invoices of goods and merchandise purchased for resale, and all such books, invoices and other records shall be open for examination at any time, by the commissioner or his duly authorized agent.

"The records provided for in this section shall be kept at the taxpayer's principal place of business within this state, and failure to keep such records shall subject the person so failing to all the penalties of this act.

"If adequate records of the gross income, gross receipts or gross proceeds of sales are not maintained or invoices preserved as provided herein, the commissioner may make additional returns and assessments from the best information available, and shall give notice by registered mail of such returns and assessments, and such returns and assessments shall be prima facie correct for the purpose of this act, and the amount of tax shown due thereby shall be a lien against all the property of the taxpayer until discharged by payment and if such tax be paid within ten days after notice by the commissioner, then there shall be added ten per centum as damages and interest at the rate of one